

89-22

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14 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 15 REGION 9

16 In the matter of:)

17 SOLA OPTICAL USA SITE, #J8)

18 RESPONDENT:)

19 Pilkington Visioncare, Inc.)

20 Proceeding Under Sections 104 and 122)
 21 of the Comprehensive Environmental)
 22 Response, Compensation, and Liability)
 23 Act of 1980 (42 U.S.C. §§ 9604 and)
 24 9622), as amended by the Superfund)
 25 Amendments and Reauthorization Act)
 26 of 1986.)

U.S. EPA Docket
 No. 89-22

27 ADMINISTRATIVE CONSENT ORDER
 28 FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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1
2 I. AUTHORITY

3 A. This Consent Order is entered into pursuant to the
4 authority vested in the President of the United States by Sec-
5 tions 104 and 122 of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980 (as amended by the Super-
7 fund Amendments and Reauthorization Act of 1986) ("CERCLA"), 42
8 U.S.C. §§ 104 and 122. The President delegated this authority to
9 the Administrator of the United States Environmental Protection
10 Agency ("EPA" or "Agency") by Executive Order 12580, 52 Fed. Reg.
11 2923, and further delegated to the Assistant Administrator for
12 Solid Waste and Emergency Response and the Regional Ad-
13 ministrators by EPA Delegation Nos. 14-8-A and 14-14-C. This
14 authority has been redelegated to the Director, Hazardous Waste
15 Management Division, EPA, Region 9.

16 B. Pilkington Visioncare, Inc. and Sola Optical USA, Inc.,
17 a division of Pilkington Visioncare, Inc. (together referred to
18 herein as "Sola") consent to and agree not to contest EPA's
19 jurisdiction to enter into and enforce this Consent Order.

20 II. STATEMENT OF PURPOSE

21 In entering into this Consent Order, the mutual objectives
22 of EPA and Sola are:

23 A. To conduct a Remedial Investigation ("RI") to determine
24 for purposes of remedy selection the nature and extent of con-
25 tamination and the potential for harm to the public health or
26 welfare or the environment caused by the release or threatened
27 release of hazardous substances, pollutants, or contaminants at
28 or from the Sola facility located at 1500 Cader Lane, Petaluma,

1 California, and any other adjacent parcels of land to which
2 ground waters containing these hazardous substances, pollutants,
3 or contaminants have migrated (the "Site"). The RI work to be
4 performed is described in the Remedial Investigation and
5 Feasibility Study Work Plan, as it may be amended or modified
6 from time to time in accordance with the terms of this Consent
7 Order ("RI/FS Work Plan"), a copy of which is attached hereto as
8 Attachment A and by this reference made a part of this Consent
9 Order.

10 B. To conduct the Feasibility Study ("FS") described in the
11 RI/FS Work Plan including the development and screening of
12 remedial action alternatives and the detailed analysis of
13 remedial action alternatives which address remedial action objec-
14 tives for the Site.

15 C. To undertake all actions required by the terms and con-
16 ditions of this Consent Order in accordance with the provisions
17 of CERCLA and the National Contingency Plan ("NCP"), 40 C.F.R.
18 Part 300 et seq., as amended.

19 III. FINDINGS OF FACT

20 A. The Sola ophthalmic lens manufacturing plant is located
21 at 1500 Cader Lane, Petaluma, California, on a parcel of land ap-
22 proximately 35 acres in size. The plant has been in operation
23 since 1978. Initially, Sola used six underground tanks for sol-
24 vent storage. In 1982, upon discovery of contaminated ground
25 water related to the tanks, Sola discontinued use of some of the
26 tanks. Several of the tanks were in use until 1985, at which
27 time all of the tanks were removed.

1 B. Sola initiated ground water investigations in 1982. In
2 1986 and 1987 samples taken from the Petaluma Station 5 Municipal
3 City Well, located 500 ft. from contaminated wells on the Sola
4 facility, contained low levels of contamination. Sola has placed
5 additional monitoring wells and has begun operation of a ground
6 water extraction and treatment system.

7 C. Soil removed from the area adjacent to the former under-
8 ground storage tanks was found to be contaminated with
9 trichloroethane ("TCA") and methylene chloride. Subsequent
10 ground water investigations (May 10, 1987) showed contamination
11 with 1,1-dichloroethylene ("1,1-DCE") at 3,300 parts per billion
12 ("ppb"), TCA at 1,500ppb, 1,1-dichloroethane ("1,1-DCA") at
13 680ppb, and trichloroethylene ("TCE") at 7ppb.

14 D. The geology underlying the Site is complex. Sediments
15 in the area consist of a sequence of interbedded clays, silts and
16 sands, with lesser amounts of gravel. The lithologic sequence is
17 often variable and discontinuous, even over short distances. The
18 sediments represent a complex sequence of alluvial deposits.
19 Ground water elevation measurements during a temporary shutoff of
20 the Station 5 Well showed a hydraulic connection between the Sta-
21 tion 5 Well and several wells on the Sola property showing con-
22 tamination. To eliminate the hydraulic effects of pumping the
23 Station 5 well, and to prevent interference with ongoing remedial
24 action at the Site, Sola and the City of Petaluma have entered
25 into an agreement whereby the City will not operate the Station 5
26 well until remedial action at the Site is completed.

27 E. Samples taken in September 30, 1988, continue to show
28

1 contamination of the ground water: 1,1 DCE at 750 ppb, TCA at
2 300ppb, 1,1-DCA at 130ppb, and TCE at 3ppb,

3 F. The known harmful health effects of some substances dis-
4 covered at the Site are as follows:

5 1) 1,1-DCE has been classified as a class "C" possible
6 human carcinogen based on evidence from limited animal studies.
7 The substance has also produced chronic toxicity data, primarily
8 liver effects, obtained from studies using laboratory rats.

9 2) TCE is classified as a group "B2": probable human
10 carcinogen. Oral exposure has produced liver carcinomas in mul-
11 tiple animal laboratory studies.

12 G. The San Francisco Regional Water Quality Control Board
13 ("RWQCB") issued cleanup order # 87-038 for the Site to Sola on
14 April 15, 1987. The RWQCB later referred the Site to EPA. Sola
15 is in compliance with the requirements of the RWQCB order. On
16 June 24, 1988, (53 Fed. Reg. 23987) the Site was proposed for in-
17 clusion on EPA's National Priorities List ("NPL") as defined in
18 Section 105 of CERCLA (42 U.S.C. § 9605)

19 IV. CONCLUSIONS OF LAW

20 A. A portion of the Sola manufacturing plant is a
21 "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.
22 § 9601(9).

23 B. Sola is a "person" as defined in Section 101(21) of
24 CERCLA, 42 U.S.C. § 9601(21).

25 C. The chemicals and their constituents at the Site are
26 "hazardous substances" as defined in Section 101(14) of CERCLA,
27 42 U.S.C. § 9601(14).
28

1 D. The past, present, and potential migration of hazardous
2 substances from the facility constitutes an actual or threatened
3 "release" as defined in Section 101(22) of CERCLA, 42 U.S.C.
4 § 9601(22).

5 E. Sola is a potentially responsible party pursuant to Sec-
6 tion 107(a) of CERCLA, 42 U.S.C. § 9607(a).

7 V. DETERMINATIONS

8 The actions required by this Consent Order are necessary to
9 protect the public health, welfare and the environment.

10 VI. WORK TO BE PERFORMED

11 A. All response work performed pursuant to this Consent Or-
12 der shall be under the direction and supervision of a qualified
13 professional engineer or registered geologist with expertise in
14 hazardous waste site investigation. Within 30 days prior to in-
15 itiation of work at the Site, Sola has notified EPA, and EPA has
16 approved, of the qualifications of the following persons to per-
17 form the RI/FS work required by this Consent Order:

18 Mark A. Adams
19 Environmental Engineer
20 Sola Optical USA, Inc.
21 1500 Cader Lane
22 Petaluma, California 94953-6002
23 (707) 763-9911

24 Levine-Fricke
25 1900 Powell Street, 12th Floor
26 Emeryville, CA 94608
27 (415) 652-4500

28 B. Sola may, in its discretion, select a different en-
gineering firm to direct and supervise the RI/FS work required by
this Consent Order. If Sola wishes to propose a new firm, it
shall notify EPA in writing of the name, title, and qualifica-

tions of the proposed engineering firm and the names of principal contractors and/or subcontractors proposed to be used in carrying out the RI/FS work required by this Consent Order. Any such engineering firm, contractors and/or subcontractors shall be subject to approval by EPA. EPA shall give Sola its approval or disapproval within thirty (30) days of receiving from Sola the information required by this Paragraph. Subject to Section XI (Dispute Resolution), if EPA subsequently disapproves of the replacement(s), EPA reserves its right under CERCLA and the NCP to conduct a complete RI/FS, and to seek reimbursement for costs from Sola. The naming of any replacement(s) by Sola shall not relieve Sola of any of its obligations to perform the RI/FS work required by this Consent Order.

C. It is hereby AGREED TO AND ORDERED that the following work shall be performed by Sola:

1. Sola shall perform tasks and submit reports as described in the RI/FS Work Plan (Attachment A). All such work shall be conducted in accordance with the RI/FS Work Plan, CERCLA, the NCP, and EPA "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (EPA, October 1988) as it may be amended or superseded from time to time (collectively referred to herein as "RI/FS Guidance"), and with the standards, specifications, and schedule contained in the approved RI/FS Work Plan. EPA will perform the Risk Assessment portion of the RI/FS pursuant to EPA Guidance.

2. The deliverables to be submitted by Sola are listed below. This list includes the type of review that EPA will con-

duct (either "Review and Comment" or "Review and Approve"). Each deliverable should include the items specified for the deliverable in the RI/FS Work Plan. The items specified are meant as a framework for each deliverable's content. Open discussions between Sola and EPA will be necessary to assure that deliverables contain sufficient detail. All deliverables required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Subject to the provisions of Section XI (Dispute Resolution), any non-compliance with such EPA-approved deliverables, unless otherwise excused by EPA in writing, shall be considered a failure to achieve the requirements of this Consent Order and subject to the provisions of Section XII (Stipulated Penalties) of this Consent Order. For the purposes of this Consent Order, "day" means calendar day unless otherwise specified in this Consent Order.

Deliverables:

- a) Monthly Status Reports REVIEW AND COMMENT
- b) Sampling and Analysis Plan
 - DRAFT: REVIEW AND COMMENT
 - FINAL: REVIEW AND APPROVE
- c) Health and Safety Plan REVIEW AND COMMENT
- d) Soil Investigation Report
 - DRAFT: REVIEW AND COMMENT
- e) Triannual Ground Water Monitoring Reports
 - REVIEW AND COMMENT
- f) Ground Water Investigation Report
 - DRAFT: REVIEW AND COMMENT

1 g) Remedial Investigation Report

2 DRAFT: REVIEW AND COMMENT

3 FINAL: REVIEW AND APPROVE

4 h) Identification and Screening of Remedial Technologies
5 Report

6 DRAFT: REVIEW AND COMMENT

7 i) Detailed Analysis of Remedial Alternatives Report

8 DRAFT: REVIEW AND COMMENT

9 j) Feasibility Study Report

10 DRAFT: REVIEW AND COMMENT

11 FINAL: REVIEW AND APPROVE

12 D. EPA shall, as shown above and as applicable, review,
13 comment upon, and approve or disapprove each report, document or
14 other deliverable. Within the time period described below in
15 this Paragraph D for review of Sola submittals, EPA shall notify
16 Sola in writing of EPA's approval, disapproval or if additional
17 review time is required. In the event of any disapproval, EPA
18 shall specify the reasons for such disapproval and recommended
19 modifications.

20 1. Within 30 days, or more if needed, of receipt of Sola's
21 deliverables, EPA shall submit to Sola its comments. Sola shall
22 incorporate EPA's comments in the deliverable and submit its
23 final deliverable within 30 days of receiving EPA's comments.

24 2. Sola may initiate dispute resolution pursuant to Section
25 XI (Dispute Resolution) of this Consent Order upon receipt of
26 EPA's disapproval of the final deliverable.

27 3. The schedule for submission of deliverables contained in
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1 the RI/FS Work Plan shall be extended for an amount of time equal
2 to any time needed by EPA in addition to the time specified in
3 Subparagraph 1 of this Paragraph D to review and comment on the
4 deliverables.

5 E. In the event of unanticipated or changed circumstances
6 at the Site, Sola shall notify the EPA Project Coordinator by
7 telephone within 48 hours of the discovery of the new or changed
8 circumstances.

9 F. EPA may determine, in accordance with the NCP, that ad-
10 ditional tasks, including remedial investigatory work, engineer-
11 ing evaluation, and interim response measures ("Additional Work")
12 are necessary as part of the RI/FS. If Sola concurs with EPA's
13 determination, the parties shall revise the RI/FS Work Plan ac-
14 cordingly. If Sola does not concur with EPA's determination, the
15 matter shall be subject to dispute resolution in accordance with
16 Section XI (Dispute Resolution) of this Consent Order. Sola
17 shall implement any Additional Work which the parties agree to
18 incorporate in a revised RI/FS Work Plan or which EPA determines
19 to incorporate in a revised RI/FS Work Plan in its statement of
20 decision issued in the dispute resolution. The Additional Work
21 shall be completed in accordance with the standards, specifica-
22 tions, requirements, and schedule determined or approved by EPA
23 in the revised RI/FS Work Plan. The time for performance of any
24 activity dependent on Additional Work will be extended by EPA for
25 an amount of time equal to that required to perform the Addi-
26 tional Work unless the dependent activity can be implemented in a
27 shorter time.

1 G. All documents, including progress and technical reports,
2 approvals, disapprovals, and other correspondence to be submitted
3 pursuant to this Consent Order, shall be sent to the following
4 addressees or to such other addresses as the parties hereafter
5 may designate in writing, and shall be deemed submitted on the
6 date received by EPA or Sola.

7 1) Documents to be submitted to EPA shall be sent to:

8 Michael Montgomery
9 Remedial Project Manager (T-4-2)
10 Hazardous Waste Management Division
11 U.S. EPA, Region 9
215 Fremont Street
San Francisco, CA 94105
Phone Number: (415) 974-7950

12 Copies shall be sent to:

13 EPA's Consultant
14 RWQCB
California Department of Health Services
15 Sonoma County Department of Health

16 2) Documents to be submitted to Sola shall be sent to:

17 Mark A. Adams
18 Environmental Engineer
Sola Optical USA, Inc.
19 P.O. Box 6002
1500 Cader Lane
Petaluma, CA 94953-6002

20 Copies shall be sent to:

21 Thomas M. Johnson
22 Levine-Fricke
1900 Powell Street, 12th Floor
23 Emeryville, CA 94608

24 Patricia L. Shanks, Esq.
25 McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, CA 94105

26 VII. DESIGNATED PROJECT COORDINATORS

27 A. On or before the effective date of this Consent Order,
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1 EPA shall designate a Project Coordinator who shall have the
2 authorities, duties, and responsibilities vested in the Remedial
3 Project Manager by the National Contingency Plan. Sola shall
4 also designate a Project Coordinator who shall be responsible for
5 overseeing the implementation of this Consent Order. The EPA
6 Project Coordinator will be EPA's designated representative at
7 the Site. To the maximum extent possible, all oral communica-
8 tions between Sola and EPA concerning the activities performed
9 pursuant to this Order shall be directed through the Project
10 Coordinators. All documents, including progress and technical
11 reports, approvals, and other correspondence concerning the ac-
12 tivities performed pursuant to the terms and conditions of this
13 Consent Order, shall be delivered in accordance with Paragraph G
14 of Section VI (Work to be Performed).

15 B. EPA and Sola may change their respective Project Coor-
16 dinators. Such a change shall be accomplished by notifying the
17 other party in writing at least one week prior to the change ex-
18 cept in the case of an emergency, in which case notification
19 shall be made orally followed by written notification as soon as
20 possible.

21 C. Consistent with the provisions of this Consent Order,
22 the EPA Project Coordinator shall also have the authority vested
23 in the On-Scene-Coordinator ("OSC") by the NCP, unless EPA desig-
24 nates a separate individual as OSC, who shall then have such
25 authority. This includes, but is not limited to, the authority
26 to halt, modify, conduct, or direct any tasks required by this
27 Consent Order and/or undertake any response actions (or portions

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1 of the response action) when conditions present or may present a
2 threat to public health or welfare or the environment as set
3 forth in the NCP.

4 D. The absence of the EPA Project Coordinator or OSC from
5 the Site shall not be cause for the stoppage of work.

6 VIII. SITE ACCESS

7 A. If for the purposes of this Consent Order, Sola requires
8 access to land other than land it owns, Sola will use its best
9 efforts to obtain access agreements from the present owners or
10 lessees within 60 days of the effective date of this Consent Or-
11 der or within 60 days of such later date that access becomes
12 necessary due to modification or expansion of the requirements of
13 this Consent Order. Such agreements shall provide reasonable ac-
14 cess for EPA, the State of California, their contractors and
15 oversight officials, and Sola and its contractors, subcontrac-
16 tors, and agents.

17 B. In the event that Sola is not able to obtain site access
18 to property owned or controlled by persons or entities other than
19 Sola, Sola shall notify EPA promptly regarding both the lack of,
20 and efforts to obtain, such access. In such event, EPA will use
21 its best efforts to assist Sola in obtaining the necessary ac-
22 cess.

23 IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

24 A. Sola shall provide EPA with all information regarding
25 hazardous substance contamination at, or released from, the Site,
26 including but not limited to:

27 1. The results of all sampling and/or tests or other tech-
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1 nical data generated by Sola or on Sola's behalf with regard to
2 soil, ground water, surface water, or air contamination by haz-
3 ardous substances, pollutants, or contamination at the Site. The
4 results of analysis obtained during the previous month shall be
5 submitted with the monthly status report. Sola shall provide EPA
6 with Quality Assurance/Quality Control ("QA/QC") documentation in
7 accordance with the Final Quality Assurance Project Plan ("QAPP")
8 submitted by Sola in accordance with the RI/FS Work Plan and ap-
9 proved by EPA.

10 2. Previous studies or reports concerning hazardous sub-
11 stances, pollutants, or contaminants at the Site.

12 3. Communications between Sola and local, state or other
13 federal authorities concerning hazardous substances, pollutants,
14 or contaminants at the Site.

15 4. Permits from local, state or federal authorities regard-
16 ing hazardous substance use or contamination at the Site.

17 B. At the request of EPA and upon two working days' advance
18 notice by EPA, Sola shall provide to EPA and/or its authorized
19 representatives split or duplicate samples of any samples col-
20 lected by Sola as part of the RI/FS Work Plan. EPA shall provide
21 to Sola the results from its analysis of split or duplicate
22 samples. Sola shall notify EPA of any planned sample collection
23 activity in the preceding monthly report or, if circumstances
24 preclude notice in the preceding monthly report, no later than
25 seven days prior to the planned sampling event.

26 C. Sola shall use quality assurance, quality control, and
27 chain of custody procedures described in the "EPA NEIC Policies
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1 and Procedures Manual," May 1978, revised May 1986, EPA-330/9-
2 78-001-R and "Interim Guidelines and Specifications for Preparing
3 Quality Assurance Project Plans, " December 1980, QAMS-005/80
4 ("QAPP Guidance"), and upon receipt by Sola from EPA, any final
5 amended or superseding versions of such documents, while conduct-
6 ing the sample collection and analysis activities required by the
7 Consent Order. Any final amended or superseding version of such
8 documents shall not apply retroactively. To provide quality as-
9 surance and maintain quality control, Sola shall:

10 1. Use a laboratory which has a documented Quality As-
11 surance Program that complies with EPA QAPP Guidance.

12 2. Ensure that EPA personnel and/or EPA authorized repre-
13 sentatives are allowed reasonable access to the laboratory and
14 personnel utilized by Sola for analysis.

15 3. Ensure that the laboratory used by Sola for analysis
16 performs according to a method or methods approved by EPA in the
17 Sampling and Analysis Plan to be submitted by Sola.

18 D. Sola shall permit EPA and its authorized representatives
19 to have access at reasonable times to the Site to monitor any ac-
20 tivity conducted pursuant to the RI/FS Work Plan or conduct such
21 tests or investigations as EPA deems necessary. Except in the
22 case of an emergency, EPA shall: permit Sola to observe any such
23 EPA tests or investigations, allow split and/or duplicate samples
24 to be taken by Sola of any samples collected by EPA or its con-
25 tractors during the performance of the RI/FS Work Plan, notify
26 Sola no less than 48 hours in advance of any sample collection
27 activity, and comply with the Site Health and Safety Plan in ef-
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fect at the Site. Nothing in this Consent Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Site.

E. Upon written request from EPA and subject to the attorney-client privilege and work-product doctrine, Sola shall identify and permit EPA and/or its authorized representative to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, that in any way concern soil, ground water, surface water or air contamination at the Site. If Sola asserts the attorney-client privilege doctrine or work product doctrine with respect to any document requested by EPA, Sola shall, upon written request by EPA, provide an identification of the title and subject matter of each document for which such an assertion is made, and an explanation of why the doctrine and/or privilege is applicable to the document or portions withheld.

F. Sola recognizes that, pursuant to CERCLA Section 104(e)(7), 42 U.S.C. § 9604(e)(7), the data and reports generated pursuant to this Consent Order are not subject to the protection of 18 U.S.C. § 1905 and 40 C.F.R. Part 2 as confidential information. Moreover, EPA and Sola recognize that information generated by Sola with respect to hazardous substances at the Site that is within the scope of Section 104(e)(7)(F) of CERCLA is not subject to the protection of 18 U.S.C. § 1905 and 40 C.F.R. Part 2.

G. If, at any time during the RI/FS process, Sola has knowledge that additional data beyond the scope of the RI/FS Work Plan, are needed for purposes of preparing the RI or FS Reports,

1 Sola shall have an affirmative obligation to submit to the EPA
2 Project Coordinator within 20 days a memorandum documenting the
3 need for additional data.

4 H. All data, factual information, and documents submitted
5 by Sola to EPA pursuant to this Consent Order shall be subject to
6 public inspection, except as provided in CERCLA Section
7 104(e)(7), 42 U.S.C. § 9604(e)(7).

8 I. Nothing in this Consent Order shall be interpreted as
9 limiting EPA's inspection or information gathering authority un-
10 der federal law.

11 J. Nothing in this Consent Order shall be interpreted as
12 limiting the authority of the OSC under the NCP.

13 X. RECORD PRESERVATION

14 Sola agrees that it shall maintain during the pendency of
15 this Consent Order and for a minimum of six (6) years after the
16 final Record of Decision for the Site has been signed, a central
17 depository of the records and documents required to be prepared
18 under the RI/FS Work Plan. In addition, Sola shall cause to be
19 retained copies of the most recent version of all documents that
20 relate to hazardous substance releases at the Site which are the
21 subject of this Consent Order and are in the possession of its
22 employees, agents, contractors, or attorneys. After this six
23 year period, Sola shall notify EPA at least 30 days before the
24 documents are scheduled to be destroyed. If EPA requests the
25 documents to be preserved for a longer period, Sola shall either
26 comply with the request or, subject to Paragraph E of Section IX
27 (Sampling, Access, and Data/Document Availability), provide EPA
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with copies of any such documents prior to destruction at no cost to EPA.

XI. DISPUTE RESOLUTION

If Sola objects to any EPA decision, pursuant to Section VI (Work to be Performed), Section XIII (Force Majeure), or any other decision or determination made by EPA pursuant to this Consent Order, Sola shall notify EPA in writing of its objections within fourteen (14) calendar days after receipt of the decision or determination. EPA and Sola will then have an additional fourteen (14) calendar days after receipt by EPA of Sola's notification of objection to reach agreement. At the end of the fourteen (14) day discussion period, EPA shall send a written statement of its decision to Sola signed by the Assistant Director for Superfund, Hazardous Waste Management Division. Sola shall then implement EPA's decision. The written statement of decision shall not be subject to further dispute resolution procedures. Use of the dispute resolution provision will not relieve Sola of its duty to complete the other tasks specified in the RI/FS Work Plan in a timely manner in accordance with the schedule. This dispute resolution provision or any EPA statement of decision pursuant to this provision does not grant or imply jurisdiction to any court to review EPA's decisions pursuant to this Consent Order.

XII. STIPULATED PENALTIES

A. Except with respect to any extensions allowed by EPA in writing, or allowed by the provisions of Section XIII (Force Majeure), for each day in which Sola fails to submit timely or

adequate deliverables required to be submitted pursuant to this Consent Order, or otherwise fails to achieve the requirements of this Consent Order, Sola agrees to pay stipulated penalties to EPA in the amounts set forth in Paragraph C of this Section XII. Stipulated penalties shall begin to accrue for inadequate final deliverables upon Sola's receipt of a written determination of disapproval of a final deliverable as provided in Section VI (Work to be Performed). Stipulated penalties shall begin to accrue for untimely submission of a draft or final deliverable specified in Section VI (Work to be Performed) upon the failure of Sola to meet the schedule set forth for the submission of the deliverable in the RI/FS Work Plan (Attachment A), as amended from time to time. Stipulated penalties shall begin to accrue for any other failure to achieve the requirements of this Consent Order upon Sola's receipt of written notice from EPA that a violation of this Consent Order has occurred for which EPA will demand payment of stipulated penalties.

B. Stipulated penalties shall accrue, as provided in Paragraph A of this Section XII, during the 28-day dispute resolution period under the provisions of Section XI (Dispute Resolution), but EPA shall not demand payment during this period. If Sola does not prevail upon final resolution of the dispute, EPA may collect stipulated penalties which accrued prior to, during, and after the period of dispute resolution. If Sola prevails upon final resolution of the dispute, no stipulated penalties shall be payable with regard to those matters so resolved.

1 C. Stipulated penalties shall accrue in accordance with
2 Paragraph A of this Section XII according to the following
3 schedule and amounts:

4 1. For each day that submission of a Monthly Status
5 Report or Triannual Ground Water Monitoring Report or draft
6 deliverable is delayed, and, except as provided in Subparagraph 2
7 of this Paragraph C, for each day of any failure to achieve the
8 requirements of this Consent Order, Sola shall pay the following:

9 Days 1-7	\$ 500/day
10 Days 8-14	\$1,000/day
11 Days 15-30	\$2,000/day
12 After 30 days	\$5,000/day

13 2. For each day that Sola fails to submit adequate or
14 timely final deliverables, Sola shall pay:

15 Days 1-7	\$ 5,000/day
16 Days 8-14	\$10,000/day
17 Days 15-30	\$15,000/day
18 After 30 days	\$25,000/day

19 D. Stipulated penalties shall be due within 30 days of
20 Sola's receipt of a demand for payment by the Director, Hazardous
21 Waste Management Division, U.S. EPA, Region 9. Stipulated
22 penalties shall be paid by certified check made payable to the
23 United States Treasury and addressed to:

24 U.S. Environmental Protection Agency
25 Region 9, Attn: Superfund Accounting
26 P.O. Box 360863M
27 Pittsburgh, PA 15251

28 Sola shall send a cover letter with any check and the letter
shall identify the Site by name and make reference to this Con-

1 sent Order. Sola shall send simultaneously to the EPA Project
2 Coordinator a copy of the cover letter and a photocopy of the
3 check.

4 E. The stipulated penalties provisions do not preclude EPA
5 from pursuing any other remedies or sanctions which are available
6 to EPA because of Sola's failure to comply with this Consent Or-
7 der; provided, however, that EPA shall not seek monetary
8 penalties for violations of this Consent Order for which Sola has
9 paid stipulated penalties pursuant to this Section XII. EPA will
10 notify Sola of its determination to pursue other remedies or
11 sanctions, but EPA's failure to notify Sola shall not affect
12 EPA's rights to pursue such remedies or sanctions or to seek
13 reimbursement of the costs of removal or remedial actions in-
14 curred by the United States.

15 F. Any delay occasioned in whole or in part as a result of
16 a prior delay for which Sola has paid a monetary penalty shall
17 not be subject to monetary penalties except that: Sola shall be
18 subject to stipulated penalties if the resulting delay could have
19 been overcome by due diligence on the part of Sola; and the time
20 allowed for the resulting delay shall be no longer than the delay
21 for which Sola paid stipulated penalties.

22 XIII. FORCE MAJEURE

23 A. Sola shall perform all of the requirements of this Con-
24 sent Order in accordance with the time schedules set out in the
25 RI/FS Work Plan except to the extent, and for the period of time,
26 that such performance is prevented or delayed by events which
27 constitute a force majeure.
28

1 B. For the purposes of this Consent Order, a force majeure
2 is defined as any event arising from causes beyond the reasonable
3 control of Sola and that cannot be overcome by Sola's diligent
4 and timely efforts. Economic hardship, normal inclement weather,
5 and increased costs of performance shall not be considered events
6 beyond the control of Sola, its contractors and agents for pur-
7 poses of determining whether an event is a force majeure.

8 C. In the event of a force majeure, the time for perfor-
9 mance of the activity delayed by the force majeure shall be ex-
10 tended for the time period of the delay attributable to the force
11 majeure and any additional time reasonably necessary for
12 remobilization of contractor(s) and equipment. The time for per-
13 formance of any activity dependent on the delayed activity shall
14 be similarly extended, except to the extent that the dependent
15 activity can be implemented in a shorter time. EPA shall deter-
16 mine whether dependent activities will be delayed by the force
17 majeure and whether the time period should be extended for per-
18 formance of such activities. Sola shall adopt all reasonable
19 measures to avoid or minimize any delay caused by a force
20 majeure.

21 D. When an event occurs or has occurred that may delay or
22 prevent the performance of any obligation under this Consent Or-
23 der and which Sola believes is a force majeure, Sola shall notify
24 by telephone the EPA Project Coordinator, or, in his/her absence,
25 the Director of the Hazardous Waste Management Division of EPA,
26 Region 9, within 48 hours of Sola's knowledge of the commencement
27 of such event. Oral notification shall be followed by written
28

1 notification, made within seven business days of Sola's knowledge
2 of the event. The written notification shall fully describe: the
3 event that may delay or prevent performance; reasons for the
4 delay; the reasons the delay is beyond the reasonable control of
5 Sola, its contractors, and agents; the anticipated duration of
6 the delay; actions taken or to be taken to prevent or minimize
7 the delay; a schedule for implementation of any measures to be
8 taken to mitigate the effect of the delay; the time needed to
9 implement any dependent activities; and any aspects of the event
10 which may cause or contribute to an endangerment to public
11 health, welfare, or the environment.

12 E. Failure of Sola to comply with the force majeure notice
13 requirements provided in Paragraph D of this Section XII in con-
14 nection with any delay in performance will be deemed an automatic
15 forfeiture of its right to assert that the delay was caused by a
16 force majeure.

17 F. If EPA and Sola cannot agree that any delay in com-
18 pliance with the requirements of this Consent Order has been or
19 will be caused by a force majeure, or on the duration of any
20 delay necessitated by a force majeure event, the dispute shall be
21 resolved according to the dispute resolution provisions in Sec-
22 tion XI (Dispute Resolution). Sola shall have the burden of
23 proving: that the delay was caused by circumstances beyond the
24 reasonable control of Sola, its contractors, and agents; that
25 reasonable measures were taken to avoid or minimize delay; and
26 the duration of the delay was reasonable under the circumstances.

XIV. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA-approved RI and FS, Sola is not released from liability, if any, for any enforcement actions beyond the terms of this Consent Order taken by EPA respecting the Site. Except as otherwise provided in Paragraph E of Section XII (Stipulated Penalties), EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

B. EPA expressly reserves all rights and defenses that it may have, including EPA's right both to disapprove of work performed by Sola and to request that Sola perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in Section VI (Work to be Performed) of this Consent Order. Subject to Section XI (Dispute Resolution), EPA reserves the right to undertake removal actions and/or remedial actions at any time. EPA reserves the right to seek reimbursement from Sola for the costs of removal and remedial actions incurred by the United States.

C. Nothing in this Consent Order or any document attached hereto shall constitute an admission by Sola of any fact or legal matter or determination set forth herein. By signing this Consent Order, Sola does not admit, accept or acknowledge and specifically denies any liability or fault with respect to: (1) the conditions at or arising from the Site, (2) any matter arising out of or relating, directly or indirectly, to the conditions

1 at or arising from the Site, or (3) any response costs which have
2 been or may be incurred by any person.

3 D. By signing this Consent Order, subject to Section 113(h)
4 of CERCLA, 42 U.S.C. § 9613(h), Sola reserves its right to con-
5 test demand for payments made pursuant to Section XV
6 (Reimbursement of Response and Oversight Costs) but only on the
7 basis that the amount demanded by EPA was not incurred by the
8 United States in connection with the Site. In addition, except
9 as expressly and specifically set forth in this Consent Order,
10 Sola does not waive any other claims, rights, or defenses that
11 Sola might have raised or may in the future raise to this Consent
12 Order.

13 XV. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

14 A. Within 180 days of the effective date of this Consent
15 Order, EPA will submit to Sola a payment demand and documentation
16 for all response and oversight costs, including indirect costs,
17 incurred by EPA in a manner not inconsistent with the NCP with
18 respect to this Site prior to the effective date of the Consent
19 Order. The documentation for these past costs shall consist of
20 EPA's Agency Financial Management System summary data ("SPUR"
21 reports) and each Monthly Work Assignment Report ("MWAR") ap-
22 plicable to the Site. Before providing such MWAR to Sola, EPA
23 may delete from the MWAR any information which Sola would not be
24 able to obtain by filing a request for information under the
25 Freedom of Information Act, 5 U.S.C. §§ 552, et seq.

26 B. No more often than annually, EPA shall submit to Sola
27 documentation and a payment demand for all response and oversight
28

1 costs incurred in a manner not inconsistent with the NCP by the
2 U.S. Government with respect to the Site. EPA's SPUR reports
3 shall serve as the documentation for payment demands. Within 30
4 calendar days of receipt of each SPUR-based accounting and accom-
5 panying payment demand made pursuant to this Section XV, Sola
6 shall remit a certified check for the amount of such costs made
7 payable to the Hazardous Substance Response Trust Fund. Checks
8 should specifically reference the identity of the Site and be ad-
9 dressed to:

10 U.S. Environmental Protection Agency
11 Region 9, Attn: Superfund Accounting
12 P.O. Box 360863M
Pittsburgh, PA 15251

13 A copy of the transmittal letter and a photocopy of the check
14 shall be sent simultaneously to the EPA Project Coordinator. EPA
15 reserves the right to bring an action against Sola pursuant to
16 Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all
17 response and oversight costs incurred by the United States re-
18 lated to this Consent Order and not reimbursed by Sola as well as
19 any other unreimbursed past and future costs incurred by the
20 United States in connection with response activities conducted
21 pursuant to CERCLA at the Site.

22 C. Demands for payment are subject to the procedures set
23 forth in Section XI (Dispute Resolution). However, as set forth
24 in Paragraph D of Section XIV (Reservation of Rights), in any en-
25 forcement action involving this Consent Order, Sola may challenge
26 any demand for payment only on the basis that the amount was not
27 incurred by the United States with respect to the Site.

28 D. During the term of this Consent Order, EPA shall send to

1 Sola on the last day of each calendar month, a copy of the MWAR
2 showing EPA contractor expenditures for the calendar month two
3 months prior to that date. Before providing such MWAR to Sola,
4 EPA may delete from the MWAR any information which Sola would not
5 be able to obtain by filing a request for information under the
6 Freedom of Information Act, 5 U.S.C. §§ 552, et seq.

7 **XVI. OTHER CLAIMS**

8 A. This Consent Order does not release Sola from any claim,
9 cause of action or demand in law or equity.

10 B. In entering into this Consent Order, Sola waives any
11 right to seek reimbursement or present any claim under Sections
12 106, 111, or 112 of CERCLA, 42 U.S.C. §§ 9606, 9611, or 9612, for
13 any work performed pursuant to this Consent Order and any
14 modifications thereto.

15 C. Sola shall bear its own attorneys fees and costs with
16 respect to all matters associated with this Consent Order.

17 **XVII. OTHER APPLICABLE LAWS**

18 Sola shall undertake all actions required by this Consent
19 Order in accordance with the requirements of all applicable lo-
20 cal, state, and federal laws and regulations unless an exemption
21 from such requirements is specifically provided under CERCLA or
22 this Consent Order or unless Sola obtains a variance or exemption
23 from the appropriate governmental authority.

24 **XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

25 A. Sola agrees to indemnify and hold harmless the United
26 States Government, its officials, agencies, departments, agents,
27 contractors, and employees, from any and all claims or causes of
28

1 action arising from or on account of acts or omissions of Sola,
2 its officers, employees, receivers, trustees, agents, assigns,
3 contractors, subcontractors, or any other person(s) acting on
4 Sola's behalf in carrying out the activities required by this
5 Consent Order. EPA is not a party to any contract Sola enters
6 for the purpose of implementing this Consent Order.

7 B. The United States Government is, to the extent allowed
8 by law, responsible for any injury or loss to persons or property
9 proximately caused by an act or omission of the United States
10 Government or its employees, agents, contractors, and subcontrac-
11 tors.

12 XIX. COMMUNITY RELATIONS/PUBLIC COMMENT

13 EPA will implement a Community Relations Program in accor-
14 dance with Agency policies, guidance documents, and public com-
15 ment policy. Sola shall participate in the community relations
16 activities, including factual review of written materials, when
17 deemed appropriate by EPA.

18 XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

19 A. This Order is effective on either the date signed by EPA
20 or on October 1, 1989, whichever is later.

21 B. Except as provided in Section VI (Work to be Performed)
22 and the RI/FS Work Plan (Attachment A), this Consent Order and
23 attachments to this Consent Order may be amended or modified only
24 with the prior consent of EPA and Sola. Such amendments or
25 modifications shall be in writing and shall be effective as of
26 the date on which such amendments are signed by both parties and
27 notice thereof is provided to each signatory pursuant to
28

1 Paragraph G of Section VI (Work to be Performed).

2 C. No informal advice, guidance, suggestions, or comments
3 by EPA regarding reports, plans, specification, schedules, and
4 any other writing submitted by Sola will be construed as reliev-
5 ing Sola of its obligation to obtain such formal approval as may
6 be required by this Consent Order.

7 D. The RI/FS Work Plan will be subject to public comment
8 following the signing of this Consent Order. Upon notice to Sola
9 and subject to Section XI (Dispute Resolution), EPA may modify
10 the RI/FS Work Plan based on the public comment.

11 XXI. PARTIES BOUND

12 This Consent Order shall apply to and be binding upon EPA
13 and upon Sola, its successors, and assigns. No change in owner-
14 ship or corporate or partnership status will alter Sola's obliga-
15 tions under this Consent Order.

16 B. Sola shall provide a copy of this Consent Order to any
17 subsequent owner(s) or successor(s) before ownership rights are
18 transferred.

19 C. Sola shall not convey any title, easement, or other in-
20 terest it has in any property comprising the Site without a
21 provision permitting the continuous implementation of the provi-
22 sions of this Consent Order.

23 XXII. REPRESENTATIVE AUTHORITY

24 Each undersigned representative of EPA and Sola certifies
25 that he or she is fully authorized to execute this Consent Order
26 and to legally bind the party he or she represents.

1 XXIII. NOTICE TO THE STATE

2 EPA is notifying the State of California by providing the
3 State a copy of this Consent Order and the Work Plan.

4 XXIV. TERMINATION AND SATISFACTION

5 The provisions of this Consent Order shall be deemed
6 satisfied upon Sola's receipt of written notice from EPA that
7 Sola has demonstrated, to the satisfaction of EPA, that all of
8 the terms of this Consent Order, including any additional tasks
9 which EPA has determined to be necessary, have been completed.
10 EPA will not unreasonably withhold the giving of such notice.

11
12 IT IS SO AGREED AND ORDERED:

13 UNITED STATES
14 ENVIRONMENTAL PROTECTION AGENCY

15
16 By:


17 Jeff Zelickson

18 Director

19 Hazardous Waste Management Division
20 Region 9

Date: Oct 2, 1989

21 PILKINGTON VISIONCARE INC.

22
23 By:


24 Richard J. Kapash

25 President

26 Sola Optical USA, Inc.
27 a Division of Pilkington Visioncare, Inc.

Date: SEPT. 6, 1989